

# House Daily Reader

Friday, February 23, 2001

Bills Included				
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# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0108

## SENATE ENGROSSED NO. **HB 1072** - 02/21/2001

Introduced by: Representative Duenwald and Senator Diedrich (Larry)

1 FOR AN ACT ENTITLED, An Act to define the theft of certain livestock as grand theft.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-30A-17 be amended to read as follows:

4 22-30A-17. Theft is grand theft, if:

5 (1) The value of the property stolen exceeds five hundred dollars;

6 (2) Repealed by SL 1990, ch 165, § 2.

7 (3) Property of any value is taken from the person of another; ~~or~~

8 (4) In the case of theft by receiving stolen property, the receiver is a dealer in stolen  
9 property, the value of the property stolen exceeds five hundred dollars in value; or

10 (5) The property stolen is cattle, horses, mules, buffalo, or captive nondomestic elk.

11 Theft in all other cases is petty theft. Grand theft is a Class 4 felony. Petty theft is divided  
12 into two degrees. Petty theft of one hundred dollars or more is in the first degree and is a Class  
13 1 misdemeanor. Petty theft is in the first degree and is a Class 1 misdemeanor if the theft is of  
14 money or property of any value less than five hundred dollars belonging to a resident or patient  
15 of a hospital, nursing facility, chemical dependency facility, assisted living center, development

1 center, human services center, or any residential facility for the mentally ill, mentally retarded,  
2 or developmentally disabled and if the theft is committed by an employee of the facility.  
3 Otherwise petty theft of less than one hundred dollars is in the second degree and is a Class 2  
4 misdemeanor.

# State of South Dakota

## SEVENTY-SIXTH SESSION LEGISLATIVE ASSEMBLY, 2001

825E0820

### SENATE ENGROSSED NO. **HB 1297** - 02/21/2001

Introduced by: Representatives Peterson (Bill), Abdallah, Adelstein, Bartling, Begalka, Bradford, Broderick, Brown (Jarvis), Brown (Richard), Burg, Clark, Davis, Derby, Duenwald, Duniphan, Eccarius, Elliott, Flowers, Frost, Fryslie, Garnos, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Heineman, Hennies (Don), Hennies (Thomas), Holbeck, Hunhoff, Jaspers, Jensen, Juhnke, Klaudt, Kloucek, Koistinen, Konold, Kooistra, Lange, Lintz, Madsen, McCaulley, McCoy, Michels, Monroe, Murschel, Nachtigal, Napoli, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Jim), Pitts, Pummel, Rhoden, Richter, Sebert, Sigdestad, Slaughter, Smidt, Solum, Sutton (Duane), Teupel, Valandra, Van Etten, Van Gerpen, Van Norman, and Wick and Senators Hutmacher, Albers, Apa, Bogue, Brosz, Brown (Arnold), Daugaard, de Hueck, Dennert, Diedrich (Larry), Diedrich (Elmer), Drake, Duxbury, Everist, Greenfield, Hainje, Ham, Kleven, Koetzle, Koskan, Madden, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Reedy, Sutton (Dan), Symens, Vitter, Volesky, and Whiting

1 FOR AN ACT ENTITLED, An Act to transfer funds from the South Dakota Public Utilities  
2 Commission gross receipts tax fund for home heating assistance funding, to make an  
3 appropriation therefor, and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Notwithstanding the provisions of § 49-1A-7, the Public Utilities Commission,  
6 shall transfer five hundred thousand dollars from the South Dakota Public Utilities Commission  
7 gross receipts tax fund to the public welfare assistance fund administered by the Department of  
8 Social Services to provide grants to qualifying individuals for home heating assistance pursuant

1 to the low-income energy assistance program provided in § 28-1-46. However, a qualifying  
2 individual, under this Act, shall meet the requirements of low-income energy assistance program  
3 and purchase energy for heating the individual's residence from a public utility as defined in  
4 subdivision 49-34A-1(12).

5 Section 2. There is hereby appropriated from the public welfare assistance fund the sum of  
6 five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, to the  
7 Department of Social Services to make grants as provided by section 1 of this Act.

8 Section 3. The secretary of social services shall approve vouchers and the state auditor shall  
9 draw warrants to pay expenditures authorized by this Act.

10 Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by  
11 June 30, 2001, shall revert in accordance with § 4-8-21.

12 Section 5. Whereas, this Act is necessary for the immediate preservation of the public peace,  
13 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
14 effect from and after its passage and approval.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0241

## SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 20** - 02/13/2001

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to dispose of certain  
2 structures located at the Agricultural Experiment Station Beef Nutrition and Dairy Units in  
3 Brookings County, to construct cattle feed preparation and silage storage facilities at the  
4 Beef Nutrition Unit, and to make an appropriation therefor.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. The Board of Regents may sell, exchange, or demolish building 1318, a metal-  
7 sided, single-storied building, and buildings 1310, 1311, 1312, 1317, and 1320, silos, all of which  
8 are located on the Agricultural Experiment Station Beef Nutrition Unit, in Brookings County.  
9 The Board of Regents may sell, exchange, or demolish building 1107 and 1108, silos, all of  
10 which are located on the Agricultural Experiment Station Dairy Unit, in Brookings County.

11 Section 2. The Board of Regents may contract to replace building 1318 with an appropriate  
12 structure for preparation of cattle feeds and buildings 1310, 1311, 1312, 1317, and 1320 with  
13 four concrete bunker silos and concrete aprons on the Agricultural Experiment Station Beef  
14 Nutrition Unit, in Brookings County.

15 Section 3. There is hereby appropriated two hundred thousand dollars (\$200,000) of other

1 fund expenditure authority to South Dakota State University to accomplish the purposes of this  
2 Act.

3 Section 4. Notwithstanding the provisions of §13-51-14, the Board of Regents may accept,  
4 transfer, and expend any funds obtained for the purposes of this Act from federal sources, gifts,  
5 contributions, or any other sources, including any revenue derived from the sale of the buildings  
6 identified in section 1 of this Act.

7 Section 5. The design and construction of the replacement building and silos shall be under  
8 the general charge and supervision of the Bureau of Administration as provided in chapter 5-14.  
9 The commissioner of the Bureau of Administration and the executive director of the Board of  
10 Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures  
11 authorized by this Act.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0345

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 25** - 02/21/2001

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on State Affairs at the request of the Department of Health

1 FOR AN ACT ENTITLED, An Act to require the use of safety seat belts by passenger vehicle  
2 occupants under eighteen years of age.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-37 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any operator of a passenger vehicle operated on a public street or highway in this state  
7 transporting a passenger who is at least five and under eighteen years of age shall assure that the  
8 passenger is wearing a properly adjusted and fastened safety seat belt system, required to be  
9 installed in the passenger vehicle if manufactured pursuant to Federal Motor Vehicle Safety  
10 Standard Number 208 (49 C.F.R. 571.208) in effect January 1, 1989, at all times when the  
11 vehicle is in motion. A violation of this section is a petty offense.

12 Section 2. That chapter 32-37 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Any operator of any passenger vehicle operated on a public street or highway in this state,



1 who is at least fourteen years of age and under eighteen years of age, shall wear a properly  
2 adjusted and fastened safety seat belt system, required to be installed in the passenger vehicle if  
3 manufactured pursuant to Federal Motor Vehicle Safety Standard Number 208 (49 C.F.R.  
4 571.208) in effect January 1, 1989, at all times when the vehicle is in motion. A violation of this  
5 section is a petty offense.

6 Section 3. That chapter 32-37 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 Any passenger of any passenger vehicle operated on a public street or highway in this state,  
9 who is at least fourteen years of age and under eighteen years of age, shall wear a properly  
10 adjusted and fastened safety seat belt system, required to be installed in the passenger vehicle if  
11 manufactured pursuant to Federal Motor Vehicle Safety Standard Number 208 (49 C.F.R.  
12 571.208) in effect January 1, 1989, at all times when the vehicle is in motion. A violation of this  
13 section is a petty offense.

14 Section 4. That § 32-37-2 be amended to read as follows:

15 32-37-2. The provisions of ~~§ 32-37-1~~ this chapter do not apply:

16 ~~—(1)—If all seating positions equipped with seat belts are occupied, or~~

17 ~~—(2)—In in~~ passenger cars manufactured before 1966 that have not been equipped with seat  
18 belts.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

723E0435

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 77** - 01/25/2001

Introduced by: Senators Duxbury and Ham and Representatives Jaspers and Nachtigal

1 FOR AN ACT ENTITLED, An Act to provide for the issuance of certain temporary veterinary  
2 medicine permits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 36-12 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The secretary of the Board of Veterinary Medical Examiners shall issue a temporary permit  
7 to a graduate of a nonaccredited college of veterinary medicine who has completed the fourth  
8 year of study at an accredited college, has successfully passed the national exam defined in rules  
9 promulgated by the board pursuant to chapter 1-26, and has enrolled in the Educational  
10 Committee for Foreign Veterinary Graduates program. The holder of a temporary permit under  
11 this section shall practice under the supervision of a veterinarian licensed in South Dakota.  
12 Temporary permits issued under this section are valid until the permittee obtains Educational  
13 Committee for Foreign Veterinary Graduates certification or for a maximum of two years from  
14 the date of issue.

# State of South Dakota

## SEVENTY-SIXTH SESSION LEGISLATIVE ASSEMBLY, 2001

624E0549

### SENATE ENGROSSED NO. **SB 210** - 02/13/2001

Introduced by: Senators Diedrich (Larry), Daugaard, Hutmacher, Olson (Ed), Reedy, Sutton (Dan), and Symens and Representatives Jaspers, Duenwald, Hanson (Gary), Jensen, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to establish a refundable checkoff program for swine.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Assessment," a per head fee collected on the sale of all varieties of swine in South  
5 Dakota;

6 (2) "Commission," the South Dakota Pork Commission;

7 (3) "Participating seller," any person who owns or operates an agricultural producing or  
8 growing facility for swine and shares in the profits and risks of loss from such  
9 operation, and who produces swine in South Dakota during the current or preceding  
10 marketing year, and has not requested a refund from the payment of assessments on  
11 swine production under this Act for the past twelve months;

12 (4) "Purchaser," any person who buys, accepts for shipment, accepts for consignment,  
13 brokers, order buys, or otherwise acquires swine from a producer;

14 (5) "Secretary," the secretary of the Department of Agriculture.

Section 2. There is hereby established the South Dakota Pork Commission. The commission shall be composed of five members who:

- (1) Are landowning residents of South Dakota;
- (2) Are at least twenty-five years of age and residents of South Dakota;
- (3) Have been actually engaged in raising swine in this state for a period of at least five years;
- (4) Derive a substantial portion of their income from raising swine; and
- (5) Are participating sellers.

Section 3. The initial members shall be appointed by the secretary from a list of recommendations submitted to the secretary by the pork producers of the state. The terms of members are three years; the initial appointments shall be for staggered terms. The secretary is an ex officio, nonvoting member of the commission.

Section 4. Each successor to the initial members shall be elected by the pork producers of the state under rules promulgated by the secretary pursuant to chapter 1-26. No member may serve for more than two consecutive elected terms.

Section 5. If a member of the commission ceases to be a participating seller or resigns from office before the expiration of the member's term, the secretary shall appoint a successor for the balance of the term of office vacated.

Section 6. The commission shall annually elect a chair and a vice chair. A majority of voting members constitutes a quorum. All meetings of the commission shall be called by the chair except that special meetings may be called by three members of the commission. The commission shall adopt procedures for the calling of special meetings.

Section 7. The commission may:

- (1) For purposes related to the swine industry, enter into contracts, including loans and

1 grants, and cooperate with any person, any local, state, or national organization,  
2 whether public or private, or with any governmental department or agency for the  
3 discovery, promotion, development, and expansion of domestic and export markets  
4 and industries and for research, protection, education, transportation, and health  
5 issues;

6 (2) Expend the funds collected pursuant to this Act and appropriated for its  
7 administration;

8 (3) Appoint, employ, discharge, fix compensation for, and prescribe the duties of such  
9 personnel as it deems necessary;

10 (4) Accept donations of funds, property, services, or other assistance from public or  
11 private sources for the purpose of furthering the objectives of the commission;

12 (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies  
13 necessary to carry out the provisions of this Act.

14 Section 8. The commission shall promulgate rules pursuant to chapter 1-26 concerning:

15 (1) The procedures for obtaining a declaratory ruling;

16 (2) The procedures for collecting assessments for swine sold to a purchaser and the  
17 amount of the assessment in accordance with section 9 of this Act;

18 (3) The procedures for obtaining a refund of the assessment;

19 (4) The procedures for collecting delinquent assessments and assessing penalties;

20 (5) The record-keeping and reporting requirements of purchasers.

21 Section 9. An assessment not to exceed 0.45 percent of the market value of each swine when  
22 sold is imposed by the commission upon all swine sold in the state by a South Dakota resident.  
23 However the commission may enter into reciprocal agreements with other states that also have  
24 a swine checkoff fee to remit the assessment to the state where the swine were grown.

1       Section 10. Any purchaser of swine shall collect the assessment imposed by this Act by  
2 deducting the assessment from the purchase prices of all swine subject to the assessment.

3       Section 11. Moneys collected from checkoff fees shall be deposited in a special revolving  
4 fund created in the state treasury and are continuously appropriated to the commission.

5       Section 12. Each purchaser shall keep a permanent record for three years of all purchases of  
6 swine, which may be examined by the commission at any reasonable time. Each purchaser shall  
7 report to the commission stating the seller and quantity of swine. The report and remittance of  
8 the assessment shall be made at the times and in the manner prescribed by the commission  
9 pursuant to rules promulgated by the commission pursuant to chapter 1-26.

10       Section 13. If a purchaser disputes an assessment made under this Act, the purchaser may  
11 appeal to the commission, which shall conduct a hearing and resolve the matter pursuant to the  
12 contested case provisions of chapter 1-26. If a purchaser fails to remit the assessment provided  
13 in this Act, the commission may enforce collection in any appropriate court within this state.

14       Section 14. Within ninety days following the assessment, any seller subject to the assessment  
15 provided in this Act may apply to the commission for a refund of the assessment. The refund  
16 application shall be accompanied by a copy of the record of the assessment on the sale. The  
17 commission shall refund the amount of the assessment collected within sixty days of receiving  
18 a valid refund application.

19       Section 15. The commission, to inform the seller, shall develop and disseminate information  
20 and instructions relating to the purpose of the swine assessment and manner in which refunds  
21 may be claimed, and to this extent shall cooperate with government agencies, state and federal,  
22 and private businesses engaged in the purchase of swine.

23       Section 16. If any national promotion, research, or consumer information program that uses  
24 an assessment mechanism on the sale of swine and is under the supervision of an agency of the

1 federal government is resumed or established, the collection of assessments under this Act is  
2 suspended beginning sixty days after the collection of assessments under the national program  
3 begins. If the collection of assessments under this Act remains suspended for more than two  
4 years, the commission is dissolved and the assets and liabilities of the commission shall be  
5 managed as the Legislature shall determine. If, after the commission has been dissolved, the  
6 collection of assessments by the national program ceases for a period of sixty days, new members  
7 of the commission shall be appointed and subsequent commission members elected as provided  
8 in this Act, and the activities of the commission shall resume.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

357E0739

## SENATE ENGROSSED NO. **SB 217** - 02/05/2001

Introduced by: Senator Dugaard and Representative Brown (Richard)

1 FOR AN ACT ENTITLED, An Act to revise the provisions for residential bid preference.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 5-19-3 be amended to read as follows:

4 5-19-3. ~~When~~ If a contract is let by the state, a department thereof, any county, municipality,  
5 school district, or other public corporation of the state for the erection, construction, alteration,  
6 or repair of any public building, other structure, or addition thereto, or for any public work or  
7 improvement or for the purchase of any goods, merchandise, supplies, or equipment of any  
8 character, the contract shall be let to the lowest responsible bidder. However, a resident bidder  
9 shall be allowed a preference on a contract against the bid of any bidder from any other state of  
10 the United States or any state or province of any foreign country which enforces or has a  
11 preference for resident bidders. The amount of the preference given to the resident bidder shall  
12 be equal to the preference in the other state or province.

13 Section 2. That chapter 5-19 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 In complying with the requirements of § 5-19-3 regarding a bidder from another country, the



1 state, any department thereof, any county, municipality, school district, or other public  
2 corporation may rely on an affidavit submitted with the bid stating the bidder's home country,  
3 state, or province does not enforce a preference for resident bidders, or if the bidder's home  
4 country, state, or province does enforce a preference for resident bidders, stating the nature and  
5 extent of that preference.

6 Section 3. That chapter 5-19 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 If a bidder submits an affidavit that falsely states that the bidder's home country, state, or  
9 province does not enforce a preference for resident bidders or that any preference is less than it  
10 actually is and if the false affidavit results in the bidder being awarded the contract, the bidder  
11 shall be penalized. The bidder's penalty is the lesser of ten percent of its contract or the amount  
12 of the preference enforced by its home country, state, or province. In addition to this monetary  
13 penalty, the contracting public corporation may cancel the bidder's contract. Nothing in this  
14 section may be deemed to impose on the state, any department thereof, any county, municipality,  
15 school district, or other public corporation a duty to determine for itself the veracity of any  
16 affidavit regarding preferences submitted by a bidder.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

445E0168

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 228** - 02/12/2001

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Staggers, Apa, de Hueck, Drake, Greenfield, Koetzle, Madden, and Sutton (Dan) and Representatives Gillespie, Begalka, Davis, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, McCoy, Teupel, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the  
2 purposes of determining whether they may have been wrongfully convicted.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person convicted of a felony and currently serving a term of imprisonment  
5 may file a petition in the circuit court that entered the judgment of conviction in the person's case  
6 requesting performance of forensic deoxyribonucleic acid (DNA) testing. The petition shall be  
7 served on the state's attorney in the county of conviction. Any response shall be filed within sixty  
8 days of the date on which the state's attorney was served with the petition.

9 Section 2. Before the court may grant the petition, the petitioner shall demonstrate that post-  
10 conviction DNA analysis will:

- 11 (1) Meet the current test for scientific reliability;
- 12 (2) Show that the petitioner would be entitled to the testing and that the results would be
- 13 admissible if the case were being presently tried;

(3) Show that a favorable test result would most likely produce an acquittal in a new trial;  
and

(4) Show that the testing will not impose an unreasonable burden on the state.

Section 3. The court, in its discretion, may order a hearing on the petition. The court may appoint legal counsel for the petitioner if the court determines that person is indigent and that appointment is in the best interests of justice. Any legal fees and expenses shall be paid by the county from which the person was convicted.

Section 4. The court may grant the petition for DNA testing if it determines that petitioner has met the four factors to test set out in section 2 of this Act and that DNA testing is suitable under the circumstances. If the court grants the petition for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. The testing shall be conducted by a laboratory mutually agreed upon by the state and the person filing the petition. If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing. DNA testing expenses shall be paid by the county from which the person was convicted.

Section 5. The result of any testing ordered under this Act shall be fully disclosed to the person filing the petition and the state's attorney. If the test results do not result in a new trial, the petitioner shall reimburse the county for the costs of the testing.

Section 6. Any law enforcement agency of the state shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The agency may determine how the evidence is retained. However, the evidence shall be retained in a condition suitable for further DNA testing.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

400E0405

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 248** - 02/13/2001

Introduced by: The Committee on Education at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a higher education savings plan.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Account," an account established as prescribed in this Act;

5 (2) "Account owner," the person who, under this Act or rules promulgated by the council  
6 pursuant to chapter 1-26, is entitled to select or change the designated beneficiary of  
7 an account, to designate any person other than the designated beneficiary to whom  
8 funds may be paid from the account, or to receive distributions from the account if no  
9 such other person is designated;

10 (3) "Contribution," any payment directly allocated to an account for the benefit of a  
11 designated beneficiary or used to pay late fees or administrative fees associated with  
12 an account, and that portion of any rollover amount treated as a contribution under  
13 section 529 of the Internal Revenue Code and related regulations;

14 (4) "Contributor," any person making a contribution to an account;

15 (5) "Council," the South Dakota Investment Council;

(6) "Designated beneficiary," except as provided in section 25 of this Act, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 12, 13, or 14 of this Act, the replacement beneficiary;

(7) "Eligible education institution," an institution that is eligible to participate in any financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended through January 1, 2001, and that is any of the following as permitted by section 529 of the Internal Revenue Code and related regulations:

(a) An institution described in the Higher Education Act of 1965 (P.L. 89-329, 79 stat. 1219; 20 United States code sections 1001 through 1150);

(b) An area vocational educational school as defined in section 521(3), subparagraph (C) or (D) of the Carl D. Perkins Vocational Education Act (P.L. 98-524; 98 stat. 2435; 20 United States code sections 2301 through 2471);

(c) An institution accredited for private postsecondary education;

(8) "Financial institution," any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, an insurance company, brokerage firm, or other similar entity that is authorized to do business in this state;

(9) "Member of the family," any of the following:

(a) A son or daughter of an individual or a descendant of the son or daughter of the individual;

(b) A stepson or stepdaughter of an individual;

(c) A brother, sister, stepbrother, or stepsister of an individual. For purposes of this subsection, the terms, brother and sister, include a brother or sister by the

1 half-blood;

2 (d) The father or mother of an individual or an ancestor of the father or mother of  
3 an individual;

4 (e) A stepfather or stepmother of an individual;

5 (f) A son or daughter of an individual's brother or sister. For purposes of this  
6 subsection, the terms, brother and sister, include a brother or sister by the half-  
7 blood;

8 (g) A brother or sister of an individual's father or mother. For purposes of this  
9 subsection, the terms, brother and sister, include a brother or sister by the half-  
10 blood;

11 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law,  
12 or sister-in-law of an individual;

13 (i) The spouse of an individual or the spouse of an individual described in this  
14 subdivision;

15 (j) Any individual who meets the criteria to be a member of the family as described  
16 in this subdivision as a result of legal adoption;

17 (k) Any other individual who is considered a member of the family under section  
18 529 of the Internal Revenue Code and related regulations;

19 (10) "Nonqualified withdrawal," a withdrawal from an account other than one of the  
20 following:

21 (a) A qualified withdrawal;

22 (b) A withdrawal made as the result of the death on disability of the designated  
23 beneficiary of an account;

24 (c) Withdrawal that is made on the account of a scholarship, or the allowance or

1 payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code  
2 and related regulations, and that is received by the designated beneficiary, but  
3 only to the extent of the amount of this scholarship, allowance, or payment; or

4 (d) A rollover or change of designated beneficiary;

5 (11) "Person," as defined in the regulations to section 529 of the Internal Revenue Code;

6 (12) "Program," the higher education savings program established under this Act;

7 (13) "Qualified higher education expenses," tuition, fees, books, supplies, and equipment  
8 required for enrollment or attendance and room and board of a designated beneficiary  
9 at an eligible education institution, and any other expenses qualifying as qualified  
10 higher education expenses under section 529 of the Internal Revenue Code and  
11 related regulations; provided that room and board expenses qualify only if the  
12 beneficiary enrolls at least half time and only if the expenses do not exceed the  
13 minimum room and board allowance determined in calculating costs of attendance for  
14 federal financial aid programs;

15 (14) "Qualified withdrawal," a withdrawal from an account to pay the qualified higher  
16 education expenses of the designated beneficiary of the account, but only if the  
17 withdrawal is made in accordance with this Act;

18 (15) "Rollover," a disbursement or transfer from an account of a designated beneficiary  
19 that is transferred to or deposited within sixty days into an account of another  
20 individual who is a member of the family of the designated beneficiary, if the  
21 transferee account was created under this Act or under a qualified state tuition  
22 program maintained by another state in accordance with section 529 of the Internal  
23 Revenue Code and related regulations.

24 Section 2. The council shall:

- 1       (1)   Establish the program in the form of a trust to be declared by the council or in such  
2           other form as the council may determine;
- 3       (2)   Develop and implement the program in a manner consistent with this Act through the  
4           adoption of rules, guidelines, and procedures;
- 5       (3)   Retain professional services, if necessary, including accountants, auditors, consultants,  
6           and other experts;
- 7       (4)   Seek rulings and other guidance from the United States Department of the Treasury  
8           and the Internal Revenue Service relating to the program;
- 9       (5)   Make changes to the program required for the participants in the program to obtain  
10          the federal income tax benefits or treatment provided by section 529 of the Internal  
11          Revenue Code and related regulations;
- 12      (6)   Interpret, in rules, policies, guidelines, and procedures, the provisions of this Act  
13          broadly in light of its purpose and objectives;
- 14      (7)   Charge, impose, and collect administrative fees and service charges in connection with  
15          any agreement, contract, or transaction relating to the program;
- 16      (8)   Select any financial institution or institutions to act as a depository and manager of  
17          the program in accordance with this Act.

18       Section 3. The council may implement the program through the use of one or more financial  
19   institutions to act as the depositories and managers. Under the program, persons may establish  
20   accounts through the program at a depository. The council may solicit proposals from financial  
21   institutions to act as the depositories and managers of the program. Financial institutions that  
22   submit proposals must describe the financial instruments that will be held in accounts. Any  
23   program depositories and managers selected by the council shall be selected from among bidding  
24   financial institutions that demonstrate the most advantageous combination, both to potential



1 program participants and this state, of the following factors:

- 2 (1) Financial stability and integrity;
- 3 (2) The safety of the investment instruments being offered, taking into account any  
4 insurance provided with respect to these instruments;
- 5 (3) The ability of the financial institution to track estimated costs of higher education as  
6 calculated by the council;
- 7 (4) The ability of the financial institutions, directly or through a subcontract, to satisfy  
8 record-keeping and reporting requirements;
- 9 (5) The financial institution's plan for promoting the program and the investment it is  
10 willing to make to promote the program;
- 11 (6) The fees, if any, proposed to be charged to persons for maintaining accounts;
- 12 (7) The minimum initial deposit and minimum contributions that the financial institution  
13 will require and the willingness of the financial institution to accept contributions  
14 through payroll deduction plans and other deposit plans; and
- 15 (8) Any other benefits to this state or its residents included in the proposal, including an  
16 account opening fee payable to the council by the account owner and an additional  
17 fee from the financial institution for statewide program marketing by the council.

18 Section 4. The council shall enter into a contract with any financial institution engaged to  
19 serve as a program manager and depository. The council may select more than one financial  
20 institution if both of the following conditions exist:

- 21 (1) The United States Internal Revenue Service has provided guidance that giving a  
22 contributor such a choice will not cause the program to fail to qualify for favorable  
23 tax treatment under section 529 of the Internal Revenue Code and related regulations;  
24 and

(2) The council concludes that the choice of financial institutions is in the best interest of program beneficiaries and will not interfere with the promotion of the program.

Section 5. A program manager shall:

(1) Take all action required to keep the program in compliance with the requirements of this Act, the rules promulgated by the council pursuant to chapter 1-26, and any contract with the council to manage the program so that the program is treated as a qualified state tuition plan under section 529 of the Internal Revenue Code and related regulations;

(2) Keep adequate records of each account, keep each account segregated from each other account and provide the council with the information necessary to prepare statements required by sections 22, 23, and 24 of this Act or file these statements on behalf of the council;

(3) Compile and total information contained in statements required to be prepared under sections 22, 23, and 24 of this Act and provide these compilations to the council;

(4) Provide the council with this information to assist the council to determine compliance with section 21 of this Act;

(5) Provide representatives of the council, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract; and

(6) Hold all accounts in trust for the benefit of this state and the account owner.

Section 6. Any contract executed between the council and a financial institution pursuant to this Act shall be for a term of at least three years and not more than seven years.

Section 7. If a contract executed between the council and a financial institution pursuant to this Act is not renewed, all of the following conditions apply at the end of the term of the

1 nonrenewed contract:

- 2 (1) Accounts previously established and held in investment instruments at the financial  
3 institution may not be terminated;
- 4 (2) Additional contributions may be made to the accounts; and
- 5 (3) No new accounts may be placed with that financial institution.

6 Section 8. The council may terminate a contract with a financial institution at any time for  
7 good cause. If a contract is terminated, the council shall take custody of accounts held at that  
8 financial institution and shall seek to promptly transfer the accounts to another financial  
9 institution that is selected as a program manager and into investment instruments as similar to  
10 the original investments as possible.

11 Section 9. The program shall be operated through the use of accounts. An account may be  
12 opened by any person who desires to save to pay the qualified higher education expenses of an  
13 individual by satisfying each of the following requirements:

- 14 (1) Completing an application in the form prescribed by the council. The application shall  
15 include the following information:
- 16 (a) The name, address, and social security number or employer identification  
17 number of the contributor;
- 18 (b) The name, address, and social security number or employer identification  
19 number of the account owner if the account owner is not the contributor;
- 20 (c) The name, address, and social security number of the designated beneficiary;
- 21 (d) The certification relating to no excess contributions required by section 21 of  
22 this Act; and
- 23 (e) Any other information that the council may require;
- 24 (2) Paying the one-time application fee established by the council;

(3) Making the minimum contribution required by the council;

(4) Designating the type of account to be opened if more than one type of account is offered.

Section 10. Any person may make contributions to an account after the account is opened. Contributions to accounts may be made only in cash.

Section 11. Account owners may withdraw all or part of the balance from an account on sixty days' notice, or a shorter period as may be authorized by the council, under rules promulgated by the council pursuant to chapter 1-26. These rules shall include provisions that will generally enable the council or program manager to determine if a withdrawal is a nonqualified withdrawal. The rules may require one or more of the following:

(1) Account owners seeking to make a withdrawal other than a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(2) Qualified withdrawals from an account shall be made only by a check payable jointly to the designated beneficiary and a higher education institution as designated by the account owner, except as expressly otherwise permitted by section 529 of the Internal Revenue Code and related regulations;

(3) Withdrawals not meeting requirements established by the council shall be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner must seek refunds of penalties directly from the council.

Section 12. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary or to any other individual in accordance with procedures established by the council by rules promulgated

1 pursuant to chapter 1-26.

2 Section 13. On the direction of an account owner, all or a portion of an account may be  
3 transferred to another account of which the designated beneficiary is a member of the family of  
4 the designated beneficiary of the transferee account, if the transferee account was created by this  
5 Act or under a qualified state tuition program maintained by another state in accordance with  
6 section 529 of the Internal Revenue Code and related regulations.

7 Section 14. Changes in designated beneficiaries and rollovers are not permitted if the changes  
8 or rollovers would violate either of the following:

9 (1) Section 21 of this Act relating to excess contributions; or

10 (2) Section 18 of this Act relating to investment choice.

11 Section 15. In the case of any nonqualified withdrawal from an account, an amount equal to  
12 ten percent of the portion of the proposed withdrawal that would constitute earnings as  
13 determined in accordance with section 529 of the Internal Revenue Code and related regulations  
14 shall be withheld as a penalty and paid to the council for use in operating and marketing the  
15 program and for state student financial aid.

16 The council, by rule promulgated pursuant to chapter 1-26, shall increase the percentage of  
17 the penalty or change the basis of this penalty if the council determines that the amount of the  
18 penalty must be increased to constitute a penalty that is more than a de minimis penalty for  
19 purposes of qualifying the program as a qualified state tuition program under section 529 of the  
20 Internal Revenue Code and related regulations.

21 The council may decrease the percentage of the penalty if it determines that the penalty is  
22 greater than is required to constitute a penalty that is more than a de minimis penalty for  
23 purposes of qualifying the program as a qualified state tuition program under section 529 of the  
24 Internal Revenue Code and related regulations.

1       Section 16. If an account owner makes a nonqualified withdrawal and no penalty amount is  
2 withheld pursuant to section 15 of this Act or the amount withheld was less than the amount  
3 required to be withheld under section 15 of this Act for nonqualified withdrawals, the account  
4 owner shall pay the unpaid portion of the penalty to the council on or before April fifteenth of  
5 the following calendar year.

6       Section 17. Each account shall be maintained separately from each other account under the  
7 program. Separate records and accounting shall be maintained for each account for each  
8 designated beneficiary.

9       Section 18. No contributor to, account owner of, or designated beneficiary of, any account  
10 may direct the investment of any contributions to an account or the earnings from the account.

11       Section 19. If the council terminates the authority of a financial institution to hold accounts  
12 and accounts must be moved from that financial institution to another financial institution, the  
13 council shall select the financial institution and type of investment to which the balance of the  
14 account is moved unless the Internal Revenue Service provides guidance stating that allowing  
15 the account owner to select among several financial institutions that are then program managers  
16 and depositories would not cause the program to cease to be a qualified state tuition plan.

17       Section 20. Neither an account owner nor a designated beneficiary may use an interest in an  
18 account as security for a loan. Any pledge of an interest in an account is of no force and effect.

19       Section 21. The council shall adopt rules pursuant to chapter 1-26 to prevent contributions  
20 on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher  
21 education expenses of the designated beneficiaries and to satisfy the safe harbor requirements  
22 under section 529 of the Internal Revenue Code and related regulations.

23       Section 22. If there is any distribution from an account to any person or for the benefit of any  
24 person during a calendar year, the distribution shall be reported to the Internal Revenue Service

1 and the account owner or the designated beneficiary to the extent required by federal law.

2 Section 23. The financial institution shall provide statements to each account owner at least  
3 once each year within thirty-one days after the twelve-month period to which they relate. The  
4 statement shall identify the contributions made during a preceding twelve-month period, the total  
5 contributions made through the end of the period, the value of the account as of the end of this  
6 period, distribution made during this period, and any other matters that the council requires be  
7 reported to the account owner.

8 Section 24. Statements and information returns relating to accounts shall be prepared and  
9 filed to the extent required by federal or state tax law.

10 Section 25. A state or local government or organizations described in section 501(c)(3) of  
11 the Internal Revenue Code and related regulations may open and become the account owner of  
12 an account to fund scholarships for persons whose identity will be determined after an account  
13 is opened. In this case, the requirement that a designated beneficiary be designated when an  
14 account is opened does not apply and each person who receives an interest in the account as a  
15 scholarship shall be treated as a designated beneficiary with respect to the interest.

16 Section 26. Any social security numbers, taxpayer identification numbers, addresses, or  
17 telephone numbers of account holders and designated beneficiaries that come into the possession  
18 of the council are confidential, are not public records, and may not be released by the council  
19 except as required by federal law.

20 Section 27. Any student loan program, student grant program, or other financial assistance  
21 program established or administered by this state or by a state supported educational institution  
22 shall treat the balance in an account of which the student is a designated beneficiary as if it were  
23 an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an  
24 asset of the student for determining a student's or parent's income, assets, or financial need.

However, this section does not apply if any of the following conditions exist:

- (1) Federal law requires all or a portion of the amount in an account to be taken into account in a different manner;
- (2) Federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner; or
- (3) A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.

Section 28. Nothing in this Act:

- (1) Gives any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;
- (2) Guarantees that a designated beneficiary will be admitted to an eligible education institution or be allowed to continue enrollment at or graduate from an eligible education institution after admission;
- (3) Establishes state residency for an individual merely because the individual is a designated beneficiary; or
- (4) Guarantees that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

Section 29. Nothing in this Act establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account, or designated beneficiary any of the following:

- (1) The return of any amounts contributed to an account;
- (2) The rate of interest or other return on any account;
- (3) The payment of interest or other return on any account; or
- (4) Tuition rates or the cost of related higher education expenditures.



1       Section 30. Every contract, application, deposit slip, or other similar document that may be  
2       used in connection with a contribution to an account shall clearly indicate that the account is not  
3       insured by this state and neither the principal deposited nor the investment return is guaranteed  
4       by this state.

5       Section 31. The council shall submit an annual report to the speaker of the House of  
6       Representatives, the president pro tem of the Senate, and the Governor by February first that  
7       summarizes the council's findings and recommendations concerning the program established by  
8       this Act.

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

282E0360

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SCR 6** - 02/16/2001

Introduced by: Senators Moore, Albers, de Hueck, Hutmacher, and Putnam and  
Representatives Michels, Brown (Jarvis), Garnos, Hunhoff, and Nesselhuf

1 A CONCURRENT RESOLUTION, Recognizing the South Dakota Corps of Rediscovery as  
2 the official planning group for South Dakota's commemoration of the Lewis and Clark  
3 Bicentennial.

4 WHEREAS, the bicentennial commemoration of the Lewis and Clark expedition will be a  
5 national event from 2003 through 2006, attracting thousands of visitors to follow the explorers'  
6 trail; and

7 WHEREAS, the Lewis and Clark Trail follows the Missouri River through the State of South  
8 Dakota; and

9 WHEREAS, the State of South Dakota wants to offer these visitors a most enlightening  
10 experience while following the trail through our state; and

11 WHEREAS, a grassroots committee was established by the South Dakota Department of  
12 Tourism five years ago to plan for this grand national event and that committee consists of  
13 members from various federal, state, tribal, county, city, and private entities along the trail; and

14 WHEREAS, this grassroots committee was officially recognized as the South Dakota Corps

1 of Rediscovery by Governor William J. Janklow on Wednesday, July 19, 2000:

2 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Seventy-sixth Legislature  
3 of the State of South Dakota, the House of Representatives concurring therein, that the South  
4 Dakota Corps of Rediscovery be South Dakota's official planning committee for the  
5 commemoration of the Lewis and Clark Bicentennial Council.